Supreme Court, U.S.
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No. ———

IN THE
Supreme Court of the United States

JESSE LAGUNA, BARBARA VICKROY, RENEE SILVA,
on behalf of themselves and all others similarly situated,
Petitioners,

v.

STATE BOARD OF EDUCATION,
Respondent,

ESCONDIDO UNION HIGH SCHOOL DISTRICT, PAUMA SCHOOL DISTRICT, VALLEY CENTER UNION SCHOOL DISTRICT, ESCONDIDO UNION ELEMENTARY SCHOOL DISTRICT, SAN PASQUAL UNION SCHOOL DISTRICT,
Real Parties In Interest.

On Petition for a Writ of Certiorari to the California Court of Appeal, Fourth Appellate District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. IS THE RIGHT TO VOTE INFRINGED WHERE A TAXING DISTRICT FUNNELS EARMARKED BOND MONEY, WITHOUT VOTER APPROVAL, FROM ITS INTENDED DISTRICT INTO A PROJECT IN ANOTHER DISTRICT?
2. IS "TAXATION WITHOUT REPRESENTATION" AN INTEREST SO FUNDAMENTAL THAT IT INVOKES STRICT SCRUTINY?
3. IS THE FIRST AMENDMENT RIGHT TO PETITION VIOLATED WHEN THERE IS "TAXATION WITHOUT REPRESENTATION? "

LIST OF ALL PARTIES

All parties are named in the caption of this case. To Petitioners' knowledge, there are no parent companies or non-wholly owned subsidiaries of the parties.

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CITATIONS TO OPINIONS AND ORDERS ENTERED IN THE CASE

The judgment of the trial court, the unpublished written opinion of the California Fourth District Court of Appeal, Division 1, and the denial of review by the California Supreme Court all appear in Appendix A to this Petition.

STATEMENT OF JURISDICTIONAL BASIS

The opinion of the California Supreme Court from which petitioner Laguna seeks review was issued on January 25, 2000, and became final on that date. An extension to file this petition was (on April 27, 2000) granted until June 26, 2000, under Rule 14.5. As such, this petition is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a), which provides as follows:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THE CASE.

The First Amendment to the United States Constitution states, in pertinent part, as follows:

> Congress shall make no law . . . abridging the . . . right of the people . . . to petition the Government for a redress of grievances.

The Fourteenth Amendment, § 1, states, in pertinent part, as follows:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The voters in a public high school district ("ESCONDIDO UNION HIGH SCHOOL DISTRICT" or "EUHSD") passed a bond in the amount of $42,976,000 in June of 1996. The bond money was earmarked to be used for repair and renovation of EUHSD's schools, as well as to build a new high school ("VALLEY CENTER HIGH SCHOOL") in a community in the eastern portion of the district. Sixteen million dollars of the bond money was used to build VALLEY CENTER HIGH SCHOOL on fifty-two acres of land owned by EUHSD. As construction of VALLEY CENTER HIGH SCHOOL was nearing completion, the State Board of California ("STATE BOARD") approved a redistricting plan in which two elementary school districts in the eastern portion of the high school district could unify and became a kindergarten through 12th grade school district ("VALLEY CENTER UNIFIED SCHOOL DISTRICT").

The California State Board of Education ("STATE BOARD") ruled that only residents within the proposed new school district could vote on the matter. The residents of the more populous City of Escondido were prohibited from voting on the redistricting.

VALLEY CENTER HIGH SCHOOL was completed and the residents of the proposed new school district voted to form VALLEY CENTER UNIFIED SCHOOL DISTRICT. However, residents of the remainder of EUHSD (City of Escondido) are required to pay off the $16,000,000 of bond money used to build VALLEY CENTER HIGH SCHOOL

for the next twenty-five years. The payment will be in the form of property taxes. However, residents of the City of Escondido will have no representation on VALLEY CENTER UNIFIED SCHOOL DISTRICT's board of trustees. The reason is that residents of the City of Escondido will be prohibited from voting for members of the VALLEY CENTER UNIFIED SCHOOL DISTRICT board of trustees. Moreover, children from the City of Escondido have no right to attend VALLEY CENTER HIGH SCHOOL.

Petitioners filed a petition for writ of mandamus in the Superior Court of California in and for the County of San Diego. Said petition was denied. The California Court of Appeal for the Fourth District affirmed the Superior Court's denial of the writ. The California Supreme Court denied review.

The Federal questions on which Petitioners now seek review were raised at the trial court in the Writ as follows:

By excluding residents of the City of Escondido from voting on school redistricting, STATE BOARD denied Laguna the equal protection of the laws resulting in (1) a loss of voting rights, (2) a loss of his First Amendment right to petition his government for redress of grievances, and (3) his being taxed without benefit of representation?[1]

The trial court passed on it in the following manner in its verbal order (references are to the transcript of the order, a copy of which is in Appendix A-1)

It denied Petitioners' Petition for Writ of Mandate by noting that the Board's authority is "plenary" and of "wide discretion" [p. 8a] in the area of school redistricting; and that the voting restrictions imposed by the Board bore a rational relationship to a legitimate State purpose. [p. 4a].

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[1] This is not a quote but a concise summary of ¶¶ 21 and 26 of the Writ.

The Federal questions were also raised in California's 4th District Court of Appeal. In Petitioners' Appeal and Reply Briefs the issues were raised in a manner similar to that of the trial court.

The California 4th District Court of Appeal passed on it in the following manner: It noted that the State has plenary power over public education, the convoluted bureaucratic maze involved acted as a safeguard, and thus the case did not sufficiently implicate the right to vote so as to review the denial of such right under a strict scrutiny standard. [p. 20a-21a of Unpublished Opinion, a copy of which appears in Appendix A-2].

The Federal questions were raised in the California Supreme Court by Petition filed on December 8, 1999. These current questions were specified in the "Questions for Review" section of the petition as follows:

> *When a taxing district funnels earmarked bond money, without voter approval, to a project in another district, will strict scrutiny apply?*

As the Supreme Court denied review, it gave no opinion, nor did it pass on the Federal questions involved.

ARGUMENTS AMPLIFYING AND SUPPORTING WRIT

I. INTRODUCTION

The case before this Court involves the issue of whether there were any "fundamental interests" present when Petitioners were denied the opportunity to vote on school redistricting. *Shapiro v. Thompson,* 394 U. S. 618, 638 (1969). Petitioners assert that paying taxes for twenty-five years to pay for a school in another district, in which they (1) receive no political representation, (2) have no standing to petition their government for a redress of grievances, and, (3) receive no educational benefits, involves such "fundamental

interests" that it was indeed unconstitutional to prevent Petitioners from voting on the neighboring school redistricting.

In contrast, the State Courts of California have ruled in this case that the above interests are either not fundamental or have not been invoked; and thus that the "rational basis test" was appropriately used by the State of California to deny Petitioners the right to vote. In addition, the lower courts claim that the State of California's power in this matter is "plenary." The heart of the matter is whether there were enough fundamental interests present to require a review using "strict scrutiny."

A. "STRICT SCRUTINY" IS THE PROPER STANDARD FOR VOTING RIGHTS CASES WHEN "FUNDAMENTAL INTERESTS" ARE PRESENT.

STATE BOARD classified the voters of the City of Escondido and the remaining part of the EUHSD school district, VALLEY CENTER and PAUMA VALLEY (hereinafter referred to collectively as "VALLEY CENTER"). The City of Escondido was classified as an urban area and VALLEY CENTER as a rural area. In view of said classifications, STATE BOARD used the "rational basis test" to eliminate the City of Escondido from the democratic process based upon (1) its population, and (2) speculation as to either how the voters of the City of Escondido would cast their ballots, or speculation as to their motivation in casting their ballots.

True enough, in most equal protection cases a classification need only bear a rational relationship to a legitimate state purpose. *Weber v. Aetna Casualty & Surety* Co., 406 U.S. 164, 172 (1972). But such an exception to this rule (requiring a compelling state interest for the statute or rule in question to survive) is where (as here) "fundamental interests" are at

stake. *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969). Thus, the initial question in this case is whether voting qualifies as a "fundamental interest."

Voting is perhaps the most fundamental of rights which are at the core of our system of government. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The Court noted:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. In urging the people to adopt the Constitution, Madison said in No. 57 of The Federalist:
>
> > Who are to be the electors of the Federal representatives? Not the rich more than the poor, not the learned more than the ignorant, not the haughty heirs of distinguished names more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States.

Id., at 17-18.

The right to vote is one of those rights that is "preservative of other basic civil and political rights. *Reynolds v. Sims*, 377 US 533, 562 (1964). As such, any alleged impairment of the right must be subjected to "strict scrutiny" by the court. *Kramer v. Union School District,* 395 U.S. 621, 626 (1969).

Inasmuch as the right to vote is a fundamental right, any classification or restriction limiting the ability to exercise the right must meet, under a strict scrutiny review, the dictates of the equal protection guarantee before a court can sustain the measure as constitutional. *Harper v. Virginia Board of Elections*, 383 US 663, 670 (1966). Thus, when states impose

restrictions on the right to vote, courts review those restrictions under a "strict scrutiny" standard. Under this severe standard, a discriminatory law will not be given effect unless its classification, first, promotes a compelling state interest; second, the classification is necessary to achieve the government's goal; and third, the classification is narrowly drawn to achieve the goal by the least restrictive means possible. *Bernal v. Fainter*, 467 U.S. 216, 219, 227 (1984); *In re Griffiths*, 413 U.S. 717, 721-722 (1973); *Plyler v. Doe*, 457 U.S. 202, 217 (1982). In essence, "strict scrutiny" means that courts must independently review the voting regulation or restriction. In the present case, STATE BOARD used the "rational basis test," rather than "strict scrutiny," to restrict the voting rights of the residents of the City of Escondido.

It is true that a restriction can be upheld if it is related to an important or overriding state interest. For example, this Court has upheld reasonable age, citizenship, and residency requirements. *Marston v. Lewis*, 410 U.S. 679, 681 (1973); *Burns v. Fortson* 410 U.S. 686, 687 (1973).

However, the "compelling interest" test must be applied if a classification has a "real and appreciable impact" upon the fairness and integrity of the electoral process. *Bullock v. Carter*, 405 U.S. 134, 144 (1972). To determine this, courts look to whether the election will cause the disenfranchised group to be "substantially affected" by the election's outcome. *Hill v. Stone*, 421 US 289, 296 (1975).

1. The residents of the City of Escondido were substantially affected by the redistricting election as they will incur tax obligations for the benefit of Valley Center Unified School District but will be deprived of all political rights.

A group of citizens is "substantially affected" by the outcome of an election when said election will (1) provide

them with benefits and/or (2) result in obligations incurred. *Id.*

In the case at bar, the redistricting which took place as a result of the unification election has obliged the residents of the City of Escondido to pay taxes for twenty-five years into another school district. In essence, they will be required to pay the majority of the $16,000,000 bond debt used to build VALLEY CENTER HIGH SCHOOL through property taxes. However, despite having to pay taxes for the benefit of another school district, the residents of the City of Escondido will have no opportunity to vote on members of the Board of Trustees of the new school district. They will thus be without any elected officials to represent them. As it now stands, the residents of City of Escondido are primarily the ones paying for VALLEY CENTER HIGH SCHOOL. The taxpayers of the City of Escondido will be paying on the bond, which made construction of VALLEY CENTER HIGH SCHOOL possible, for the next twenty-five years. However, Escondido taxpayers do not reside in the new school district and thus will not be allowed to vote on the new school district's school board elections. The essence of the matter is that the residents of the City of Escondido are being taxed without the benefit of representation.

In addition, they will have no standing to petition the new school district's school board for redress of grievances. Pursuant to the First Amendment to the United States Constitution, all residents have the right to petition their government for the redress of grievances. This is a fundamental right. The trustees of the new school district will not represent the residents of the City of Escondido even though said residents pay taxes for the benefit of said school district. The heart of the matter is that the taxpayers of the City of Escondido will pay taxes but will receive no political benefits, including First Amendment rights, for paying said taxes. As a result, the residents of the City of Escondido have

a very strong interest in the issue of redistricting. This interest is not merely financial but is one of core political rights.

Further, the children residing in the City of Escondido have no right to attend the new high school built with the funds coming from the City of Escondido.[2] Thus, for this reason also, the residents of the City of Escondido have a fundamental interest in the outcome of the redistricting election:

> Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit . . . the exclusion of otherwise qualified citizens from the franchise.

City of Phoenix v. Kolodziejski 399 U.S. 204, 209 (1970).

As this Court found in *City of Phoenix,*

> Not only do those persons excluded from the franchise have a great interest in approving or disapproving municipal improvements, but they will also contribute, as directly as property owners, to the servicing of the bonds by the payment of taxes to be used for this purpose.

Id. at 210.

In like manner, the residents of the City of Escondido have an interest relative to their obligation to pay for the servicing of the bonds by the payment of taxes which built VALLEY CENTER HIGH SCHOOL.

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[2] Pursuant to the California Education Code, a student may submit an application to a foreign school district to attend a school within said district. However, the foreign school district has no obligation to grant the application of the student. California Education Code §48209.1.

2. In light of the obligations visited upon the residents of the City of Escondido, the right to vote in a redistricting election is fundamental and, thus, exclusion of the City of Escondido voters must be viewed with "strict scrutiny."

Since the redistricting involves financial obligations and political rights, all persons within EUHSD are substantially affected by the election. As this was an election of general interest, the restrictions placed upon the residents of the City of Escondido should be viewed with strict scrutiny:

> Our cases, however, have not held or intimated that only property-based classifications are suspect; in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification.

Hill v. Stone, supra 421 U.S. at 298.

STATE BOARD used a "rational basis" test to determine that there were differences in the interests between residents of the City of Escondido and those residing within the proposed unification area. As a matter of law, a difference in interest is not enough for a governmental entity to justify restrictions on the voting franchise under a "strict scrutiny" analysis. *City of Phoenix v. Kolodziejski*, *supra* 399 U.S. at 212. The State entity must show that the party being deprived of the right to vote has an interest "substantially less" than those allowed to participate in the election. STATE BOARD has failed to do this.

B. REASONS WHY THE ISSUES PRESENTED FOR REVIEW MERIT THE GRANTING OF THE PETITION.

A review of the issues presented in this case is appropriate at this point. First, "is the right to vote infringed where a taxing district funnels earmarked bond money, without voter approval, from its intended district into a project in another

district?" The discussion above shows that, absent a compelling state interest, the classification which denied the residents of the City of Escondido an opportunity to vote despite the presence of fundamental interests was an infringement of Constitutional proportions.

Second, "Is 'taxation without representation' an interest so fundamental that it invokes strict scrutiny?" As this Court has noted, by contributing to the servicing of the bonds by the payment of taxes[3] qualifies as a fundamental interest in its own right. *City of Phoenix v. Kolodziejski*, supra, 399 U.S. at 210. When adding to this the fact that those paying taxes for the benefit of another jurisdiction have no political representation, it is evident that such taxation without representation involves a fundamental interest. This Court has never provided an analysis of this issue in this specific context. As such, this case will provide the Court an opportunity to clearly articulate that "taxation without representation" is not only tyranny, but is also repugnant to an interest so fundamental as to require strict scrutiny. Regrettably, the State Courts in California do not see "taxation without representation" to be a fundamental interest requiring strict scrutiny.

Finally, the third issue for review is, "Is the First Amendment right to petition violated when there is 'taxation without representation?'" As described above, the residents of the City of Escondido will be required to pay taxes for twenty-five years into another school district. However, they cannot vote for board members for said school district. In other words, there is no member of the school board in the foreign school district who represents them.

The California Courts have responded by stating that any member of the public can attend a school board meeting and

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[3] This fundamental interest belongs to property owners and non-property owners alike. *Hill v. Stone*, supra., 421 U.S. at 297.

place a matter on the agenda, and thus (so it is claimed) the right to petition has not been implicated. The issue then is whether being allowed to place an item on a foreign school board agenda is equivalent to having political representation. But the mere ability to address a foreign board of trustees does not carry the same weight as a constituent. Constituents vote for or against their representatives; non-constituents have no such control. This Court has stated that the right to petition is the guarantee of "the ability of the people to make their wishes known to **their representative**." *Eastern R. Conf. v. Noerr Motor* 365 U.S. 127, 139 (1961) (emphasis added). To have any effect, the right to petition logically requires that one has a representative to petition. Petitioners request that this Court decide whether the First Amendment right to petition is violated when, as here, there is "taxation without representation."

II. CONCLUSION

It has been well and truly said that "taxation without representation is tyranny." [4] In this case, Escondido residents are being taxed yet can appeal to no representative. Petitioners are thus victims of an unjust tyranny. The Petition should be granted.

Respectfully submitted:

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Dated: June, 2000

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[4] Attributed to James Otis (1725-1783) as the watchword of the American Revolution. The Oxford Dictionary of Quotations (2 nd ed. 1953).

APPENDICES

APPENDIX A

[Filed Oct. 28, 1998]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
(NORTH COUNTY BRANCH)

CASE NO. N 078926

JESSE LAGUNA, BARBARA VICKROY, RENEE SILVA,
on behalf of themselves and all others similarly situated,
Petitioners,

v.

STATE BOARD OF EDUCATION,
Respondent.

ESCONDIDO UNION HIGH SCHOOL DISTRICT; PAUMA SCHOOL DISTRICT; VALLEY CENTER UNION SCHOOL DISTRICT, ESCONDIDO UNION SCHOOL DISTRICT, SAN PASQUAL UNION SCHOOL DISTRICT,
Real Parties In Interest.

ORDER DENYING PETITIONERS' FIRST AMENDED PETITION FOR WRIT OF MANDATE

Petitioner's First Amended Petition for Writ of Mandate was regularly heard on October 5, 1998, at 9:30 a.m. in Department M of this court. Appearing for petitioner was Kevin T. Snider of United States Justice Foundation and appearing for respondent was Edmundo Aguilar, counsel for the California State Department of Education. Appearing for Real Parties in Interest, Escondido Union High School District, Pauma School District and Valley Center Union School District, was Martha Buell Scott of Miller Brown &

Dannis. The matter has been fully briefed by the parties, and oral argument has been carefully considered. The Reporter's Partial Transcript, dated October 5, 1998, is attached hereto as Exhibit A and incorporated by reference herein.

Good cause appearing therefor, the COURT ORDERS AS FOLLOWS:

The Petition is denied and the matter is dismissed in favor of respondent.

BY ORDER OF THIS COURT
Dated: October 28, 1998

APPROVE AS TO FORM:

/s/ Kevin T. Snider
KEVIN T. SNYDER
Attorney for Petitioner
Dated: October 23, 1999

/s/ Edmundo Aguilar,
EDMUNDO AGUILAR
Attorney for Respondent
Dated: October 23, 1998

/s/ David B. Moon, Jr.
THE HONORABLE DAVID B. MOON, JR.
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
NORTH COUNTY BRANCH

DEPARTMENT M BEFORE HON. DAVID B. MOON

CASE NO: N078926

JESSE LAGUNA, *et al.*,
on behalf of themselves and all others similarly situated,
Petitioners,

vs.

STATE BOARD OF EDUCATION,
Respondent.

ESCONDIDO UNION HIGH SCHOOL DISTRICT, *et al.*,
Real Parties of Interest.

VISTA, CALIFORNIA MONDAY OCTOBER 5, 1998
(TRANSCRIPT EXCERPT.)

THE COURT: I have enough information to make a decision. I've spent quite a bit of time on this case and I've penned out a tentative ruling, which I will now read into the record as the courts ruling.

And, Pam, you can mark it from this point forward. I'm sure counsel will want to get a copy.

This is the court's ruling: the court, as I've said before, declines to rule on specific evidentiary objections; however, the court will disregard all evidence which is found to be incompetent Or inadmissible, and for this proposition see BILJAC, B-I-L-J-A-C, associates versus FIRST INTER-STATE BANK (1990) 218 cal.app.3d 1410.

The petitioners' request for judicial notice is granted. The petition for writ of mandate pursuant to CCP 1085 is denied as follows, and this is the reasoning therefore:

The request for an order directing the respondent, State Board, to set aside that portion of Its resolution for the formation of the Valley Center Union school district, passed July 9, 1998, which prohibits the voters in the portions of the Escondido Union high school district line outside of the Pauma school district and the Valley Center Union school district from voting on the unification of the Pauma school district and the valley center union school district and directing respondent to require the area of voting in the election to include the entire territory of the Escondido Union High School District is denied.

Don't you just hate these long sentences.

The voting restriction imposed by the board bears a rational relationship to a legitimate state purpose. That is, avoiding an election in which the residents of the city of Escondido, open quote, could Overwhelm the smaller number of voters in the petitioned area, prevent those voters from obtaining the benefits of the proposed reorganization, *i.e.*, a local school Government which reflects the interest of the community, or conversely, require the transfer to take place against the will of the petitioned area of voters and, comma, in so doing impose a higher tax burden on the property owners in the effected territory, closed quote.

This quote is from the petitioners' lodged exhibit 6 pages 13 and 14.

Contrary to the petitioners' arguments, the strict scrutiny test does not apply to the review of the determination of the area of election pursuant to the holding in board of supervisors of Sacramento County versus local agency formation commission of Sacramento County, (1992) 3 Cal. 4th 903.

This case does not come within the holding in Fullerton Joint Union High School District versus state Board of Education (1982) 32 Cal.3d 779, as the instant election does not result in an, open quote, real and appreciable impact upon the equality, fairness, and integrity of the judicial process,

close quote, thus requiring a compelling state interest in order to justify the area of election adopted by the board.

Petitioners argue that similar to the situation in the Fullerton case, the area of election in this case involves a suspect classification, that is, it will result in the exclusion of thousands of Hispanic voters. As pointed out by the court in the board of supervisors case. This type of classification could justify application of strict scrutiny and was likely the reason behind the holding in the Fullerton case. See the Board of Supervisors case *supra* at 918.

However, there is no merit to the petitioners claim that carving out an election area that merely excises a certain raw number of minority voters has a discriminatory effect. This is especially true where the evidence shows that the relative number of minority voters in terms of percentages is unchanged as a result of limiting the election area. For reference see the petitioners, lodged exhibit 11.

There is likewise no merit to petitioners claim that they stand to lose other fundamental Constitutional rights and that this loss along with the financial impact on them of the proposed unification justified application of the strict scrutiny test. The Fundamental constitutional right delineated by Petitioners is the first amendment right to petition their government for redress of grievances; however, Petitioners have failed to demonstrate that this right Will be negatively impacted by the proposed unification.

The petitioners argue for the first time in their reply brief that they will also be subject to taxation without representation; however, petitioners fail to distinguish that right from the right to petition the government for redress. Financial Impact identified by the petitioners is the type found to be modest, as that term was used by the court in the Board of Supervisors case, leaving that court to conclude that there was no justification for applying strict scrutiny to the election area adopted by the Board.

There is no merit to petitioners' claim that they were not afforded due process of law. The agendas for the April and May meetings before the Escondido Union High School District Board of Trustees, those are Exhibits "C" and "D" to the Jenkins' declaration, demonstrate that the unification issue was to be considered. Petitioners' claim that these agendas do not reflect that the board would be considering—considering material amendments is irrelevant in view of the fact that the petitioners were already on notice That material changes were necessary. And for reference, see the petitioners' lodged exhibit number 6. And in view of the fact that petitioners were actually represented at the public hearings. For reference see Exhibits "D" and "F" to the Jenkins' declaration.

In addition, petitioners failed to cite to authority imposing a duty on the agency to include notice of material changes in such matters. Petitioners' claim that they have a duty process right to a hearing at a specific location is not supported with authority. Petitioners have failed to demonstrate that they did not have notice of those meetings or were not afforded an opportunity to be heard at them. The State Board had jurisdiction to hear the amended Petition despite m fact that no petition was forwarded From the Escondido Union High School District to the offices to in turn be forwarded to the state board.

The Petitioners' exhibit number 16 reveals that the Escondido Union High School District was present at the state board meeting in July of 1998 and voiced its approval of the amended petitions. The Petitioners' claim that the state board did not have, open quote, official authorization, closed quote, from The Escondido Union High School District board is not supported with authority.

Petitioners' claim that the board lacked jurisdiction to hear what were clearly materially amended petitions pursuant to 5 CCR section one eight seven—five seven two also lacks merit as this regulation does not apply to the facts of this

case. that regulation expressly applies only, open quote, following a decision by the board on a proposal petition or appeal, close quote.

Petitioners fail to present evidence showing That prior to July 1998, the board breached any, open quote, decision on a proposal, petition, or appeal, close quote, using that same language, for unification, Which would trigger 5 CCR section 18572. Also see for reference the Petitioners' lodged exhibit 6 at page 2.

The Petitioners' request for an order directing the Respondent to set aside that portion of its resolution for the formation of the Valley Center Unified School District, passed July 1998 in which the Pauma School District and the Valley Center Union School District will not assume its proportionate share of the Bonded indebtedness of the Escondido Union High School District, and the request to require the Pauma and Valley center district to accept their proportionate Share of that indebtedness is also denied.

The allocation of bonded indebtedness contained in the resolutions of the Pauma School District, the Valley Center Union School District, and The Escondido Union High School District adopted by the State board in July 1998 does not constitute an abuse of discretion in that the board properly adopted the resolution dividing the bonded indebtedness pursuant to the education code section 35738. The petitioners' Claim that the amended allocation is less equitable than an allocation pursuant to education code section 35576.

Parenthetically when I write these things, I use sentences that are too long. I think I have a verb in there.

MS. SCOTT: We won't exercise strict scrutiny, Your Honor.

THE COURT: I have a verb in there.

They do so by ignoring the impact on the new school district if it were to assume the entire sixteen million dollar bonded indebtedness. See the Petitioners' lodged exhibit number 6.

In view of the wide discretion granted to the board pursuant to education code section 35738, it cannot be said that the state boards' exercise of its Is plenary powers were fraudulent, unreasonable, or so arbitrary as to so indicate an abuse of discretion as a—as a matter of law, and the case citation for that is California School Employees Association versus Pasadena Unified School District (1977) 71 cal.app.3d 328.

Have I made sufficient findings and legal rulings for purposes of any writ or appeal, Mr. Snider?

MR. SNIDER: Yes, Your Honor.

THE COURT: And Ms. Scott?

MS. SCOTT: Your honor, yes. And I would just point out, in the interest of clarity, that back when the court was issuing its ruling on jurisdiction, there was a sentence about the no petition was forwarded by the high school district to the state board, and I believe that the word that the court wanted to use was resolution at that point.

THE COURT: That could be. Instead of petition?

MS. SCOTT: Yes.

THE COURT: It was.

MS. SCOTT: Resolution?

THE COURT: Let me see if I can find that here.
No resolution was forwarded.

MS. SCOTT: I think that's—

THE COURT: You are correct.

Mr. Aguilar, are there any other findings and/or legal rulings that I need to make to preserve your rights on appeal or writ?

MR. SNIDER: No Your Honor. That's fine. Thank you.

THE COURT: Ms. Scott, in light of the court's ruling, do you want to prepare the appropriate order on this petition for writ of mandate? Even though you weren't the moving party.

Ms. Scott: Yes, Your Honor.

THE COURT: And circulate that for signature as to form?

MS. SCOTT: Yes

MR. SNIDER: Your Honor, because of this election coming up in march and wanting to cause as little harm as possible, we would like that the final order be done as quickly as possible.

THE COURT: Ms. Scott, would you prepare that and submit it so that the court will have it in 10 days?

MS. SCOTT: Thank you.

MR. AGUILAR: Thank you.

MR. SNIDER: Thank you, Your Honor.

(Brief recess.)

THE COURT: All right. Did you want this on the record?

MS. SCOTT: Yep, because it affects the tentative ruling.

THE COURT: All counsel are here again on the record.

MS. SCOTT: You had an inquiry.

MS. SCOTT: Just a detail, Your Honor. The terms Union School District and Unified School District are terms of art and they mean different things.

THE COURT: I know. If I misstated that—

MS. SCOTT: It's Escondido Union High School District throughout the decision, and not unified.

THE COURT: Did I say union or unified?

MS. SCOTT: You apparently did. I didn't catch it, but the superintendent did.

THE COURT: Well, my recollection is that there's a Union School district and there's a Unified High School District.

Is it Union High School?

MS. SCOTT: It's the Union High School and it comprises a number of little elementary districts, two of which want to unify and become a "K" through 12 district.

THE COURT: All right. Wherever I said then Escondido unified, I meant Escondido Union High School District.

MS. SCOTT: Right.

THE COURT: All right. With that correction—now, there's also an Escondido Union School District?

MS. SCOTT: That's the Elementary School District.

THE COURT: Yes

MS. SCOTT: You can't tell the players without a program.

THE COURT: Is there a unified in any of those districts?

MS. SCOTT: Not yet, but we eventually hope there will be if we can have the election.

THE COURT: I'm used to San Diego unified.

MS. SCOTT: That's correct. Unified, it means it goes all the way from kindergarten to 12th grade.

THE COURT: Right. I'll direct the reporter's transcript will indicate that—will reflect wherever it says unified, if I used that word, it should be union.

MS. SCOTT: With reference to the Escondido

* * * *

High School District, Yes. You used the word Unified means Union. Unified refers with respect to the new District that hasn't been formed yet.

THE COURT: Thank you.

(THIS MATTER IS ADJOURNED)

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

I, Pamela A. Carter, CSR Certificate No. 9982, an official reporter of the Superior Court of The State of California, in and for the county of San Diego, hereby certify that I reported in machine shorthand the proceedings in the within case, and that The foregoing transcript, consisting of pages numbered 1 to 12 inclusive is a true and correct transcription of the proceedings in this case

Dated at San Diego, California, this 8th day of October,1988.

/s/ Pamela A. Carter,
PAMELA A. CARTER CSR #9982
Official Court Reported

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

[Filed Oct. 29, 1999]

D032295
(Super. Ct. No. N78926)

JESSE LAGUNA *et al.*,
Plaintiffs and Appellants,
v.

STATE BOARD OF EDUCATION,
Defendant and Respondent,

ESCONDIDO UNION HIGH SCHOOL DISTRICT *et al.*,
Real Parties in Interest and Respondents.

APPEAL from a judgment of the Superior Court of San Diego County, David B. Moon, Jr., Judge. Affirmed.

On July 8, 1998 State Board of Education (State Board) approved a resolution to create the Valley Center Unified School District (New District) by merging the Valley Center Union School District (Valley Center), the Pauma School District (Pauma) and the portion of the Escondido Union High School District (Escondido Union) that lay within the territorial boundaries of the Valley Center and Pauma districts. Jesse Laguna, Barbara Vickroy and Renee Silva (collectively Petitioners) appeal from the denial of a writ of mandate to direct State Board to set aside the portions of the resolution that: (1) prevented voters who reside in the territory of Escondido Union not included in New District from voting on the resolution to create New District and (2) allowed New District not to assume its proportionate share of Escondido Union's bonded indebtedness. Petitioners' contend (1) the resolution denied them equal protection of the (a) by

denying them their constitutional right to vote, (b) by disenfranchising the Hispanic community, (c) by burdening them with taxes, (d) by taxing them without representation, and (e) by interfering with the constitutional rights to petition the government and to education; (2) the proceedings denied Petitioners due process; (3) State Board lacked jurisdiction to pass the resolution; and (4) State Board abused its discretion by apportioning the bonded indebtedness pursuant to Education Code section 35738. We affirm.

FACTS

New District covers a geographic area north and east of the City of Escondido. It includes three rural communities and several American Indian reservations. This area is distinct from the City of Escondido because of its rural character and the inland mountains, which separate it from the City of Escondido. Until the reorganization, this area was part of Escondido Union and had no high school within its boundaries.

Petitioners Jesse Laguna, Barbara Vickroy and Renee Silva are voters and taxpayers who reside in the portion of Escondido Union not included in the reorganization of New District. Petitioner Laguna is a second generation Mexican-American.

On July 26, 1995, the boards of Valley Center, Pauma and Escondido Union, and the boards of the other two elementary districts within Escondido Union—Escondido Union Elementary District and San Pasqual Elementary District—filed a petition to form New District. On September 6, 1995, the San Diego County Office of Education (County Office) held a public meeting in Pauma and another in Valley Center to discuss the petition. In December 1995, County Office recommended the reorganization be approved-and forwarded its analysis to the State Board. County office recommended that any liabilities for Escondido Union's permanent assets be

allocated to New District based upon the relative assessed valuation of the property within New District.

On June 4, 1996, before State Board acted upon the petition, the voters in Escondido Union approved a $42,976,000 bond measure. Escondido Union used $16,000,000 of the bond proceeds to build a new high school in Valley Center (New High School)

On October 31, 1996, the superintendents of Escondido Union, Valley Center and Pauma asked State Board to delay its decision for at least one year to allow Escondido Union to build New High School and to allow the three districts to decide how to allocate the liability for the school bond. The districts within Escondido wanted New District to assume the amount of the bonds used to build New High School. That allocation would double the portion of New District's tax rates charged for the bonded indebtedness (from $17.21 to $34.33 per $100,000 assessed valuation) but only minimally reduce the tax rates. in the rest of Escondido Union (from $17.21 to $13.28). Valley Center and Pauma were unwilling to assume the tax increase.

In December 1996, State Board held a hearing to consider the reorganization proposal. A document produced for that hearing reviewed the state-mandated criteria and recommended the reorganization. The document specified that only the voters within the Valley Center and Pauma districts would vote on the reorganization and that New District would assume the portion of the liability for the bond measure used to build New High School. State Board postponed consideration of the reorganization to allow the parties to agree to an equitable division of assets and liabilities.

After negotiations, the three districts agreed to a resolution that allocated to New District all physical property, furniture and equipment located within its borders and no other property except school buses, did not change the tax rate

charged for the bonded indebtedness, and provided for New District to pay $1, 000, 000 to Escondido Union.

All three districts held public meetings to discuss the resolution and get public input. On April 2, 1998, Valley Center and Pauma held a joint public meeting to discuss the resolution. The school boards of Valley Center and Pauma. each approved the resolution at public meetings held on May 14. Escondido Union discussed the resolution during three public meetings held in Escondido on April 28, May 19 and June 9. Petitioner Vickroy spoke against the resolution during the May 19 and June 9 meetings. At the May 19 meeting, the school board of Escondido Union adopted the resolution and directed that it be forwarded to State Board to be placed on the July 1998 agenda, with the understanding that it could be pulled from State Board's agenda if the questions that had been raised at the meeting were not resolved to the satisfaction of the Escondido Union school board. On June 9 the school board elected not to reverse its previous approval of the resolution.

On July 9, State Board held a public hearing to discuss the reorganization. Petitioners Vickroy and Laguna spoke against the resolution at that hearing. State Board approved the resolution with a minor modification.

On August 18, Petitioners filed a petition for a writ of mandate (C.C.P. § 1085) to set aside, vacate, or modify portions of the resolution. The Superior Court denied the writ on October 28.

On March 2, 1999, the voters who resided within New District approved the resolution creating New District.

DISCUSSION

State Board's approval Of the resolution is a quasi-legislative act. (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 786 & fn. 3

(hereafter *Fullerton*) Judicial review of a quasi-legislative decision is limited to deciding whether State Board. abused its discretion. (*Ibid.*), A state agency abuses its discretion when its action is "arbitrary, capricious, or entirely lacking in evidentiary support . . . ." (*Pitts v. Perluss* (1962) 58 Cal.2d 824, 833.) "In essence, the question is whether substantial evidence supports the agency's decision (citation], although it has also, been stated that 'what constitutes reasonable evidentiary support may vary depending upon the nature of the action. (*Mike Moore's 24 –Hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1306, quoting *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 232.)

Deciding whether a state agency abused its discretion is a question of law. (*Shapell Industries, Inc. v. Governing Board, supra*, 1 Cal.App.4th at p. 233.) Therefore, we independently review the trial court it's decision. (*Mike Moore's 24-Hour Towing v. City of San Diego, supra*, 45 Cal.App.4th at p. 1305.)

Insofar as Petitioners challenge State Board's action as unconstitutional, the standard of review is different. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11 [reviewing de novo whether regulation is inconsistent with terms or intent of authorizing statute].) We independently review constitutional questions. (*State of Ohio v. Barron* (1997) 52 Cal.App.4th 62, 67.)

I. Equal Protection

We reject Petitioners, contention that they were denied equal protection because they were not allowed to vote on the resolution to create New District. In most equal protection cases, courts apply the rational basis test to decide whether the legislative classification is "rationally related to a legitimate governmental purpose" or "bears some fair relationship to a legitimate public purpose." (*Board of*

Supervisors v. Local Agency Formation Com. (1992) 3 Cal. 4th 903, 913 (hereafter *Local Agency*), quoting *Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 436 and *Plyler v. Doe* (1982) 457 U.S. 202, 215.) If, however, the legislation involves fundamental interests or suspect classes, then the court must apply strict scrutiny, which requires a showing that the classification is necessary to further a compelling state interest. (*Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942, 952.)

Petitioners do not deny that State Board's determination of who could vote was rationally related to the legitimate government interest of the "logical formation and determination of local agency boundaries, [which] is an important factor. in promoting orderly development." (Gov. Code § 56001.) Petitioners contend instead that this portion of the resolution should be subject to strict scrutiny because it affects the fundamental interests of voting, taxation without representation, petitioning for grievances, and education and also involves suspect classes because it disenfranchises the Hispanic community.

We reject Petitioners' first contention that the resolution is subject to the strict scrutiny standard because it denied them their fundamental right to vote. Petitioners argue we Should. rely upon *Fullerton* instead of *Local Agency*. *Fullerton* is a plurality opinion that lacks authority as precedent. (*Local Agency, supra*, 3 Cal.4th at p. 918.) The California Supreme Court in *Local Agency* implicitly disapproved the *Fullerton* court's reasoning by adopting the reasoning of the dissent. The court explained that strict scrutiny might have been appropriate in Fullerton due to concern that the creation of that new district could result in racial segregation. (*ibid.*) In contrast, New District and Escondido Union will have the same proportion of white and minority students. We rely therefore on *Local Agency*.

"[I]ndividual interests in voting are much attenuated by the state's plenary power to oversee and regulate the formation of its political subdivisions, and the same power entitles the state to identify as, differing in degree the interests of those, who may vote and those who may not." (*Local Agency, supra*, 3 Cal.4th at p. 914.) In *Local Agency*, the state's legislative scheme gave the right to ratify a proposal to incorporate a new city only to those voters within the boundaries of that city. (*Id.* at p. 906-907.) The court relied upon the state's plenary power to create political subdivisions and the lengthy, legislatively required administrative process that preceded the voters' ratification of the proposal. (*Id.* at p. 912.) That process includes the voters' petition, public hearings and review of a multitude of legislatively required factors. (*Id.* at p 910-912.)

The holding and reasoning of Local Agency apply directly to this case. Like the power to create political subdivisions, the state legislature has plenary power over public education and over the formation of school districts, which are the state's agents (Cal Const. art IX, § 5; *Butt v. State of California* (1992) 4 Cal.4th 668, 681; *Fullerton, supra*, 32 Cal.3d at 786, fn. 3; *Hall v. City of Taft* (1956) 47 Cal.2d 177, 180-181.) As in *Local Agency*, only the voters in the geographic area of New District were given the right to ratify the resolution. The legislative scheme for creating a new school district, like that for incorporating new cities, is a complicated process, which parallels the, process used to incorporate new cities. The process begins with a petition either of registered voters or of the majority of the governing boards of each of the affected districts. (Ed. Code,[1] § 35700.) Within 60 days, the county committee on school district organization must hold one or more public hearings,

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[1] All further statutory references are to the Education Code unless otherwise specified.

having made available a description of the petition that must include specific information.[2] (§§ 35705, 35705.5.) The county committee may add to and amend the petition. (§ 35705.5, subd. (a).) The county committee must then forward the petition and its recommendation to State Board. (§ 35708.) Prior to approving the petition, State Board must hold a public hearing and must insure that specific conditions are met.[3] (§§ 35752-35754.) State Board may amend the

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[2] The description of the petition must include all of the following:

"(1) The rights of the employee's in the affected districts to continued employment.

"(2) The revenue limit per unit of average daily attendance for each affected district and the effect of the petition, if approved, on such revenue limit.

"(3) Whether the districts involved will be governed, in part, by provisions of a city charter and, if so, in what way.

"(4) Whether the governing boards of any proposed new district will have five or seven members.

"(5) A description of the territory or districts in which the election, if any, will be held.

"(6) Where the proposal is to create two or more districts, whether the proposal will be voted on as a single proposition.

"(7) Whether the governing board of any new district will have trustee areas and, if so, whether the trustees will be elected by only the voters of that trustee area or by the voters of the entire district.

"(8) A description of how the property, obligations, and bonded indebtedness of existing districts will be divided.

"(9) A description of when the first governing board of any new district will be elected and how the terms of office for each new trustee will be determined.," (§ 35705.5, subd. (b).)

[3] Section 35753, subdivision (a) provides:

"The State Board of Education may approve proposals for the reorganization of districts, if the board has determined, with respect to the proposal and the resulting districts, that all of the following conditions are substantially met:

petition. (§ 35754.) Only after State Board has approved the petition can the voters ratify the petition through an election. (§ 35756.) If the petition does not specify the territory within which the election will be held, "the election shall be held only in the territory proposed for reorganization." (§ 35732.)

This complicated process, like the process for incorporating new cities, includes the safeguards of numerous public hearings, required information, specific conditions to be met and review by two governmental bodies. The voters' role in confirming a new school district, like the voter's role in confirming the incorporation of a new city, "is rather like

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"(1) The new districts will be adequate in terms of number of pupils enrolled.

"(2) The districts are each organized on the basis of a substantial community identity.

"(3) The proposal will result in an equitable division of property and facilities of the original district or districts.

"(4) The reorganization of the districts will not promote racial or ethnic discrimination or segregation.

"(5) The proposed reorganization will not result in any substantial increase in costs to the state.

"(6) The proposed reorganization will not significantly disrupt the educational programs in the proposed districts and districts affected by the proposed reorganization and will continue to promote sound education performance in those districts.

"(7) The proposed reorganization will not result in a significant increase in school housing costs.

"(8) The proposed reorganization is not primarily designed to result in a significant increase in property values causing financial advantage to property owners because territory was transferred from one school district to an adjoining district.

"(9) The proposed reorganization will not cause a substantial negative effect on the fiscal management or fiscal status of the proposed district or any existing district affected by he proposed reorganization.

"(10) Any other criteria as the board may, by regulation, prescribe."

that of the masons who place a keystone at the apex of a high and intricate arch. The voters' approval is an essential piece, but as we have shown, by the time the question reaches the electorate the proposal will already have undergone a labyrinthine process containing elaborate safeguards designed to protect the political and economic interests of [its various constituencies] (*Local Agency, supra*, 3 Cal.4th at p. 912.) For that reason, the creation of a new school district, like the incorporation of a new city, is based upon the state's plenary power and does not sufficiently implicate the right to vote to require strict scrutiny. (*Id.* at p. 917.)

We also reject Petitioners, contention that the strict scrutiny standard should apply because the election disenfranchised the vast majority of the Hispanic population. Because Petitioners I contention raises the prospect that State Board's specification of the voting district may have violated equal protection due to invidious racial discrimination, Petitioners' contention is similar to that of racially gerrymandered districting schemes. The United States Supreme Court case recently addressed this issue:

> "[A]ll laws that classify citizens on the basis of race, including racially gerrymandered districting schemes, are constitutionally suspect and must be strictly scrutinized. When racial classifications are explicit, no inquiry into legislative: purpose is necessary. A facially neutral law, on the other hand, warrants strict scrutiny only if it can be proved that the law was motivated by a racial purpose or object, or if it is unexplainable on grounds other than race."

(*Hunt v. Cromartie* (1999) 119 S. Ct. 1545, 1548-1549 [italics added, internal quotations and citations omitted].)

There is no evidence that the decision to allow only residents of New District to vote was racially motivated. The Hispanic population does not constitute a majority of

Escondido Union or of New District.[4] in fact, Hispanic voters have the same proportional representation in both districts. Additionally, School Board has stated nonracial reasons to limit the vote: "to encourage orderly growth and development" and "to avoid island of unwanted, remote, or poorly served school communities within large districts." Because the record does not show a racial purpose, the decision to allow only the residents of New District to vote is not subject to strict scrutiny.

We also reject Petitioners contention. that the outcome Of the election has resulted in a substantial. financial detriment because they must continue to pay for the portion of the bonded indebtedness used to build New High School. Substantial evidence supports the court's assessment that these taxes are merely a "modest detriment." The bonded indebtedness created by the 1996 bond measure resulted in a cost of $17.21 per $100,000 of assessed valuation. If the bonded indebtedness used to build New High School were transferred to New District, New District's cost would rise to $34.33 per $100,000 of assessed valuation and the remaining Escondido Union's cost would decrease to $13.28 per $100,000 of assessed valuation. This decrease of $4 per $100,000 valuation is similar in size to the loss of tax revenue of $5 per resident found to be a "modest detriment" in *Local Agency, supra*, 3 Cal.4th at p. 923. Therefore, the financial obligation is not substantial enough to require the application of strict scrutiny.

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[4] Petitioners submitted 1990 United States Census figures that show Escondido Unified including New District has a population of 129,285, of which 30,311 or 23 percent are Hispanic. New District has a population of 20,650, of which 4,931 or 24 percent are Hispanic. By limiting the vote to the population of the New District, 84 percent of the Hispanic voters could not participate in the election.

We also reject Petitioners' contention that they are taxed without the benefit of representation in that they are obligated to pay a share of the *portion of the bonded* indebtedness used to build New High School, but cannot vote for the members of the school board of New District. The voters within the original Escondido Union district were eligible to vote on the bonded indebtedness prior to the school district reorganization. At the time of the vote, the voters were informed that a portion of the money would be used to build a new high school. Furthermore, the board of New District has no power to use the funds from the bonded indebtedness. Escondido Union built New High School before the district reorganization. The remaining funds from the bonded indebtedness will be used in Escondido Union. Therefore, Petitioners cannot claim taxation without representation. They were able to vote on the bonded indebtedness and to elect the members of the school board of Escondido Union who decided how the funds were used.

Petitioners also contend their right to petition the government for redresses, has been violated because they will not have standing to petition New District even though they will continue to pay the bond indebtedness used to build New High School. We disagree.

The right to petition "refers more generally to the right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws . . . . [T]he petition clause . . . includes acts designed to influence public opinion concerning an issue before a legislative or administrative body. In this general sense, the right. of petition embraces such activities as complaint letters to government agencies, publicity campaigns, boycotts, and other forms of protest." (*Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1122 [internal quotations And citations omitted].)

Petitioners exercised their right to petition in the present case. Petitioners Laguna and Vickroy raised their objections

before the State Board of Education. Vickroy carried out a publicity campaign on this issue. Vickroy also raised objections at two meetings during which the Escondido Union school board discussed and approved the allocation of bond indebtedness.

Petitioners can continue to exercise their right to petition before the school boards of Escondido Union and New District. Residency is not a requirement for placing matters on a school board's agenda under section 35145.5, nor for addressing a school board under Government code section 54954.3. Thus, the record does not support Petitioners, contention that they were or will be denied their right to petition.

Petitioners contend we should apply the strict scrutiny standard because the creation of New District impacts the fundamental right to an education by moving the newest high school out of overcrowded Escondido Union and making it more difficult for Escondido Union children to attend New High School. We disagree.

Education is a fundamental right under the California Constitution, which requires each district to provide its students with an education basically equivalent to that provided elsewhere in the State. (*Butt v. State of California* (1992) 4 Cal.4th 668, 683, 685; *Serrano v. Priest* (1976) 18 Cal.3d 728, 767-768.). The constitution does not require educational programs to be identical, nor does it require the state to remedy all problems a district may have. (*Butt, supra*, 4 Cal.4th at p. 686.) There is a constitutional violation only if "the district's program, viewed as a whole, fundamentally falls below the prevailing statewide standards." (*Id.* at pp. 686-687.)

Because the record is silent as to the severity of current overcrowding, Petitioners have not met their burden of proving the overcrowding in Escondido Union is of

constitutional dimension. Furthermore, substantial evidence supports School Board's finding that the overcrowding would not be affected by the reorganization because Escondido Union had planned to build a new high school in the territory now part of New District.

Petitioners also contend that Escondido Union students, right to education is violated because the students will no. longer have the right to attend New High School. (§§ 35160.5, subd. (b), 48209.1.) We disagree. The California Constitution merely guarantees a student a right to "basically equivalent" education. (*Butt, supra*, 4 Cal.4th at p. 685.) That right simply cannot be stretched to include the right to attend a specific school. Therefore, the fundamental right to an education is not implicated in the decision to create New District.

Strict scrutiny is not appropriate, because the election has not affected Petitioners' fundamental rights nor have Petitioners suffered a significant financial detriment. The decision to limit the vote to the residents of New District does not violate equal protection.

II. Due Process

Petitioners contend their due process rights were violated because' they claim (1) no hearings were held within the City of Escondido, and (2) no hearings were held prior to approving the bond allocation. The record does not support their claims.

Although County Office did not hold meetings in the City of Escondido prior to County Office's approval of the original proposal, Escondido Union held three meetings in Escondido to discuss and approve the resolution that allocated the assets and liabilities. Petitioner Vickroy spoke at two of those meetings. Liabilities Therefore, public meetings in which the allocation of the bonded indebtedness was

discussed were held in Escondido. In addition to these local meetings, State Board held a public meeting before it approved the resolution. Petitioners Laguna. and Vickroy spoke at that meeting. Therefore, Petitioners exercised their opportunity to be heard before State Board approved the proposal. Additionally, substantive due process. does not apply because, as discussed in Part I above, Petitioners were not denied fundamental rights.

III. State Board's Jurisdiction

Petitioners contend State Board did not have jurisdiction to approve the resolution because State Board did not have before it Escondido Union's approval of the resolution. We disagree.

Under section 35700, a petition for reorganization can be filed by a majority vote of board members from all school districts affected by the proposed reorganization. This occurred in 1995 when five districts approved the initial proposal and sent it to County Office. The resolution approved by State Board was amended, however, to include the allocation of the 1996 bond measure. Although Escondido Union had approved the resolution incorporating this allocation, it failed to send the resolution to State Board. Therefore, before it approved the modified resolution, State Board had before it resolutions approved by Pauma and Valley Center, but not Escondido Union. However, a member of the Escondido Union school board testified before State Board that Escondido Union had approved the resolution.

Nothing in the Education Code requires each of the school districts to approve modifications to a reorganization proposal. Both County Office and State Board have the power to amend the proposal. (§§ 35705.5, subd. (a), 35754.) The materials. Before State Board explained that it was amending the original proposal under section 35754. Therefore, State Board acted within its jurisdiction when it

approved the resolution, thereby amending the original petition.

IV. The Apportionment of the Bond Issue

Petitioners contend State Board abused its discretion when it apportioned the bonded indebtedness by using its broad equitable powers under section 35738[5] instead of following the formula outlined in section 35576, subdivision (b)[6] We disagree.

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[5] Section. 35738 provides: "Plans and recommendations may include a method of dividing the bonded-indebtedness other than the method specified in paragraphs (1) and (2) of subdivision (b) of section 35576 for the purpose of providing greater equity in the division. Consideration may be given to assess valuation, number of pupils, property values, and other matters which the petitioners or county committee deems pertinent."

[6] Section 35576, subdivisions (a) and (b) provide in pertinent part:

"(a) when territory is taken from one district . . . [t]he territory transferred shall cease to be liable for the bonded indebtedness of the district of which it was formerly a part and shall automatically assume its proportionate share of the outstanding bonded indebtedness of any district of which it becomes a part.

"(b) The acquiring district shall pay the original district the greatest of the amounts determined under provisions of paragraphs (1) or (2) or the amount determined pursuant to a method prescribed under Section 35738.

"(1) The proportionate share of the outstanding bonded indebtedness of the original district, which proportionate share shall be in the ratio which the total assessed valuation of the transferring territory bears to the total assessed valuation of the original district in the year immediately preceding the date on which the annexation is effective for all purposes. This ratio shall be used each year until the bonded indebtedness for which the acquiring district is liable has been repaid.

"(2) That portion of the outstanding bonded indebtedness of the original district which was incurred for the acquisition or improvement of

County Office and State Board initially recommended that liabilities be allocated as required by section 35576. After the voters' approval of the bonded indebtedness, however, Valley Center and Pauma were unwilling to use that formula because it would double their tax rates. After. negotiations, the three school districts decided to reallocate the bonded indebtedness. In such a way as to leave the tax rates unchanged. In lieu of that, New District would pay Escondido Union $1,000,000. State Board approved the districts, decision under section 35738.

Under section 35738, State Board has broad powers to decide how to apportion bonded indebtedness to provide the greatest equity. Here, State Board approved the districts, decision that it was more equitable to leave the voter-approved tax assessments unchanged. There is nothing in the record that supports Petitioners' argument that this decision was arbitrary, capricious or lacking evidentiary support. Before the. decision was made, State Board held a public. hearing during which Petitioners explained their objections to this allocation. Further, as discussed in Part I above, this allocation does not violate Petitioners constitutional rights. State Board did not abuse its discretion.

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school lots or buildings, or fixtures located therein, and situated in the territory transferred."

DISPOSITION

The judgment is affirmed.

/s/ O"Rourke, J.
O'Rourke, J.

WE CONCUR:

/s/ Huffman
HUFFMAN, Acting P.J.

/s/ McDonald
McDONALD, J.

FOURTH APPELLATE DISTRICT,
DIVISION ONE, NO D032295 S084272

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

[Filed Jan. 25, 2000]

JESSE LAGUNA *et al.*,
Appellants

v.

STATE BOARD OF EDUCATION,
Respondent

ESCONDIDO UNION HIGH SCHOOL DISTRICT *et al.*.
Real Parties In Interest

Appellants' petition for review DENIED.

GEORGE

Chief Justice

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
NORTH COUNTY BRANCH

[Filed Aug 12 1998]

Case No. N078926

JESSE LAGUNA, on behalf of himself
and all others similarly situated
Petitioner,

v.

STATE BOARD OF EDUCATION,
Respondent,

ESCONDIDO UNION HIGH SCHOOL DISTRICT,
PAUMA SCHOOL DISTRICT,
VALLEY CENTER UNION SCHOOL DISTRICT,
Real Parties In Interest.

WRIT OF MANDATE
[Code of Civil Procedure § 1085]

JESSE LAGUNA hereby petitions this Court for a WRIT OF MANDATE and herein alleges as follows:

I.

THE PARTIES

1. Petitioner, JESSE LAGUNA, is a voter and taxpayer who resides within the Escondido Union High School District (hereinafter referred to as "EUHSD").

2. Petitioner complains on behalf of himself and all other persons who reside, and/or vote, and/or pay taxes in EUHSD.

Such members of the class are readily ascertainable but are so numerous as to make joinder impracticable. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The claims of Petitioner is typical of the claims of the class. Petitioner will fairly and adequately protect the interest of the class.

3. Respondent, the CALIFORNIA STATE BOARD OF EDUCATION (hereinafter referred to as "STATE BOARD"), at all times mentioned herein was, and is, now the agency charged with approval or disapproval of petitions for the reorganization of school districts.

4. Real Party In Interest, EUHSD, is the governmental agency responsible for the administration of the public secondary school system for the City of Escondido and adjacent communities, including Valley Center and Pauma Valley.

5. Real Party In Interest, PAUMA SCHOOL DISTRICT (hereinafter referred to as "PSD"), is the governmental agency responsible for the administration of the public elementary school system for the area generally known as Pauma Valley.

6. Real Party In Interest, VALLEY CENTER UNION SCHOOL DISTRICT (hereinafter referred to as "VCUSD") is the governmental agency responsible for the administration of the public elementary school system for the area generally known as Valley Center.

II.

GENERAL ALLEGATIONS

7. On July 26, 1995, the governing boards of EUHSD, PSD, and VCUSD filed a petition for unification of PSD and VCUSD to become the Valley Center Unified School District (hereinafter referred to as "NEW SCHOOL DISTRICT"). A portion of EUHSD's territory would be transferred to form

NEW DISTRICT. A copy of he petition is lodged with the court and marked as EXHIBIT 1.

8. On August 2, 1995, said petition was transmitted to the San Diego County Committee on School District Organization (hereinafter referred to as "COUNTY COMMITTEE"). COUNTY COMMITTEE set September 6, 1995, for public hearings per Education Code (hereinafter referred to as "Educ.C.") §35705. Said hearings were noticed at the addresses of PSD and VCUSD's district offices. A copy of the Notice of Public Hearings is lodged with the Court and marked as EXHIBIT 2.

9. The above-described meetings were held on September 6, 1995. However, no meeting was noticed or held at EUHSD district offices. On September 13, 1995, COUNTY COMMITTEE established a timeline for the required unification process and ratified a contract with a consulting firm (CALDWELL FLORES WINTERS, INC.) to develop analysis and conclusions of STATE BOARD'S criteria for unification, and the tentative plans and recommendations for PSD and VCUSD's unification proposal. A copy of CALDWELL FLORES WINTERS, INC.'s final report is lodged with the Court and marked as EXHIBIT 3.

10. On December 13, 1995, COUNTY COMMITTEE recommended approval of the proposed unification of NEW SCHOOL DISTRICT. A copy of said recommendation is lodged with the Court and marked as EXHIBIT 4.

11. In San Diego County the San Diego County Board of Education acts as COUNTY COMMITTEE.

12. In June, 1996, a general obligation bond of approximately Forty-Three Million Dollars ($43,000,000.00) was passed by the voters of EUHSD. Said money was to be used for the repair and renovation of the district's schools as well as to build a new high school (Valley Center High

School). Valley Center High School (hereinafter referred to as VCHS) is located within the boundaries of NEW SCHOOL DISTRICT. A copy of the bond measure is lodged with the Court and marked as EXHIBIT 5.

13. Sixteen Million Dollars ($16,000,000.00) of the above-described bond money was used for the construction of VCHS. Further, the District received another Sixteen Million Dollars ($16,000,000.00) in matching funds from the State of California to construct VCHS.

14. On December 12, 1996, STATE BOARD produced a document entitled, "Valley Center Unification Proposal—San Diego County" (hereinafter referred to as "STATE BOARD PROPOSAL"). A copy of STATE BOARD PROPOSAL is lodged with the Court and marked as EXHIBIT 6.

15. In pertinent part, STATE BOARD PROPOSAL would cause the proportionate share of bonded indebtedness of EUHSD to be assumed by NEW DISTRICT. This is based upon a legal opinion from the San Diego County Counsel. A copy of said opinion is lodged with the Court and marked as EXHIBIT 7.

16. Another pertinent portion of STATE BOARD PROPOSAL provided that the election would be limited to the petition area only, i.e., within the boundaries of PSD and VCUSD. STATE BOARD used the "rational basis test" to find that the "voters in the remaining Escondido Union High School District [City of Escondido] do not have a substantial interest in the proposed reorganization and could, by overwhelming the smaller number of voters in the petitioned area, prevent those voters from obtaining the benefits of the proposed reorganization; or, conversely, require the transfer to take place against the will of the petitioned area voters and, in so doing, impose a higher tax burden on the property owners in the affected territory." (EXHIBIT 6).

17. In May, 1998, the San Diego County Office of Education (hereinafter referred to as "SDCOE") filed resolutions, passed by two (2) of the three (3) affected school districts (PSD and VCUSD) in May, 1998, with STATE BOARD. A copy of these resolutions and SDCOE's transmittal letter are lodged with the Court and marked as EXHIBIT 8. Said transmittal letter does not contain a resolution passed by EUHSD These resolutions changed the formula for the division of assets and debts for the respective school districts In sum, NEW SCHOOL DISTRICT will give EUHSD a Million Dollars ($1,000,000.00) in cash. NEW SCHOOL DISTRICT will keep the Sixteen Million Dollars. ($16,000,00000) of bond money to build VUHS. Further, NEW SCHOOL DISTRICT will keep the Sixteen Million Dollars ($16,000,000.00) in matching funds. EUHSD Will transfer title of the real property, on which VCHS is built, from EUHSD to NEW SCHOOL DISTRICT. All EUHSD equipment located within NEW SCHOOL DISTRICT will become the property of NEW SCHOOL DISTRICT. In addition, EUHSD will assume the debt for the Sixteen Million Dollars ($16,000,000.00) in bond money which was used to build VCHS. At a normal rate of interest, for twenty-five (25) years, the Sixteen Million Dollars ($16,000,000.00), in bonded indebtedness, will ultimately increase to close to Thirty-Two Million Dollars ($32,000,000.00).

18. On July 9, 1998, STATE BOARD approved the resolution which, in pertinent part, (1) allowed NEW SCHOOL DISTRICT to keep the bond money, along with the assets and debts described in the preceding paragraph, and, (2) allowed only those within the boundaries of PSD and VCUSD to vote on unification to the exclusion of the remaining part of EUHSD, i.e., the City of Escondido. A copy of the resolution and accompanying report are lodged with the Court, marked as EXHIBIT 9.

19. On July 29, 1998, SDCOE Superintendent of Schools, RUDY CASTRUITA (hereinafter referred to as "CASTRUITA"), ordered the election on the unification of NEW SCHOOL DISTRICT to be held on March 2, 1999. A copy of the Order is lodged with the Court, marked as EXHIBIT 10. As per STATE BOARD's resolution, CASTRUTTA's order provides that only the voters of PSD and VCUSD will vote on the issue of unification.

III.

EQUAL PROTECTION OF THE LAWS

20. Petitioner realleges the foregoing paragraphs as though fully set forth hereat.

21. In the absence of a compelling State interest in limiting the election area, the relevant geographic area for an election is composed of all affected districts. The decision of Respondent limiting the election proposed for transfer, in the absence of a compelling state interest violates the Constitutional right of the electors of the remaining portions of EUHSD to equal protection under the California and United States Constitutions.

22. The population of the City of Escondido, Pauma Valley, and Valley Center is approximately One Hundred Twenty-Nine Thousand Two Hundred Eight-Five (129,285), as per the 1990 Census. Of that number, Thirty Thousand Three Hundred Eleven (30,311) are Hispanic surnamed, with Twenty-Five Thousand Three Hundred Eighty (25,380) Hispanic: surnamed individuals living in Escondido. A copy of the pertinent portion of the Census data is lodged with the Court and marked as EXHIBIT 11.

23. The exclusion of the City of Escondido from voting on unification has resulted in excluding eighty-four percent (84%) of the Hispanic surnamed vote. In addition, and/or in the alternative, said exclusion is a violation of the equal

protection clauses under the California and United States Constitutions.

24. Petitioner has exhausted all administrative remedies and there is no remedy at law for the violation of Petitioner's rights as alleged herein above. The Petitioner is entitled to relief as requested to have the decision limiting the area for election vacated.

IV.

CONSTITUTIONAL RIGHT TO A REPRESENTATIVE FORM OF GOVERNMENT

25. Petitioner realleges the foregoing paragraphs as though fully set forth hereat.

26. Petitioner, and all persons in Petitioner's class, will be paying taxes on the Sixteen Million Dollars ($16,000,000.00) of bonded indebtedness, which has gone to construct VCHS, for twenty-five (25) years. Although Petitioner is compelled to pay this tax, Petitioner is prohibited from voting at future elections for the elected officials who represent NEW SCHOOL DISTRICT. Further, as a citizen residing outside of NEW DISTRICT, Petitioner has no standing to petition NEWDISTRICT governing body for a redress of grievances. This, in spite of the fact that Petitioner has paid, and will continue to pay, taxes for NEW DISTRICT's assets. In essence, Petitioner is being taxed without the benefit of representation.

27. Petitioner has exhausted all admimstrative remedies and there is no remedy at law for the violation of Petitioner's rights as alleged herein above. Unless this Court. issues the Writ as requested, Petitioner will be irreparably harmed by the violation of his Constitutional rights as described herein above.

28. Petitioner is entitled to the relief as requested by this Petitionfor Writ of Mandate to the decision to not have PSD

and VCUSD assume their portion of the bonded indebtedness vacated

V.

DUE PROCESS

29. Petitioner realleges the foregoing paragraphs as though fully set forth hereat.

30. As a result of there being no public hearings at the district offices of EUHSD, as described above, Petitioner class was excluded from the debate of the issues described above, and was thus deprived of due process.

31. After all public hearings were over, Real Parties In Interest changed the formula for division of assets and liabilities as well as for the bonded indebtedness. Real Parties In Interest then submitted the new formula to SDCOE and STATE BOARD without the opportunity for full public disclosure and debate. This resulted in a further deprivation of due process for Petitioner class.

32. Petitioner is entitled to the relief as requested by this Petition for Writ of Mandate to have the decision to not have PSD and VCUSD assume their portion of the bonded indebtedness vacated.

VI.

RESPONDENT ABUSED ITS DISCRETION IN GRANTING REAL PARTIES IN INTERESTS' PROPOSAL TO NOT REQUIRE PSD AND VCUSD TO ASSUME ITS PROPORTIONATE SHARE OF BONDED INDEBTEDNESS

33. Petitioner realleges the foregoing paragraphs as though fully set forth hereat.

34. Educ.C. § 5738 requires that bonded indebtedness may be divided in a manner different than Educ.C. § 35576. Pursuant to Educ.C. § 35576, NEW DISTRICT must assume

its proportionate share of bonded indebtedness. This was explained to Real Parties In Interest in a legal opinion by County Counsel. (EXHIBIT 7). Under Educ.C. § 35738, alternatives to Educ.C. § 35576 can be used for the division of bonded indebtedness if the alternatives provide *greater* equity in said division. As described above, the proposed division provided to SDCOE by Real Parties In Interest and submitted to STATE BOARD do not provide greater equity than having NEW DISTRICT assume its portion of the outstanding bonded indebtedness.

35. Since the alternatives for dividing bonded indebtedness are not more equitabie than that prescribed by Educ C § 35576, STATE BOARD abused its discretion

36. Petitioner is entitled to the relief as requested by this Petition for Writ of Mandate to have the decision to not have PSD and VCUSD assume their portion of the bonded indebtedness vacated.

VII.

SDCOE'S FAILURE TO SUBMIT A RESOLUTION BY EUHSD ON UNIFICATION TO STATE BOARD RENDERS THE PETITION FOR UNIFICATION FATALLY DEFECTIVE.

37. Petitioner realleges the foregoing paragraphs as though fully set forth hereat.

38. The governing boards of PSD and VCUSD passed final resolutions on unification. (EXHIBIT 8).

39. The resolutions were submitted to SDCOB which filed them with STATE BOARD.

40. There is no record of EUHSD submitting a final resolution to SDCOE. Further, the record contains no such resolution, submitted or not.

41. As a result of there being no final resolution by EUHSD submitted to SDCOE and subsequently filed with

STATE BOARD, the Petition filed by SDCOE is fatally defective.

42. Petitioner is entitled to the relief as requested by this Petition for WRIT OF MANDATE to vacate the STATE BOARD resolution.

VIII.

PRAYER

WHEREFORE, Petitioner prays as follows:

1. That the Court grant this WRIT OF MANDATE directing Respondent to set aside that portion of its resolution of July 9, 1998, which prohibits voters in the remaining portions of EUHSD from voting on the unification of PSD and VCUSD;

2. That the Court grant this WRIT OF MANDATE directing Respondent to set aside that portion of its resolution of July.9, 1998, in which PSD and VCUSD will not assume its proportionate share of the bonded indebtedness of EUHSD.

3. That the Court grant this WRIT OF MANDATE directing Respondent to vacate the resolution of July 9, 1998, in its entirety.

4. That the Court grant this WRIT. OF,MANDATE to requite the remaining portions of EUHSD to vote on the unification of PSD and VCUSD;

5. That the Court grant this WRIT OF MANDATE to require PSD and VCUSD to accept their proportionate share of the bonded indebtedness;

6. For attorney's fees;

7. For taxable costs of suit incurred herein; and

8. For such other and further relief as the Court deems just and proper.

Dated: August 13, 1998

UNITED STATES JUSTICE FOUNDATION

By: Kevin T. Snider
KEVIN T. SNIDER
Attorney for Petitioner, JESSE LAGUNA

VERIFICATION

I, JESSE LAGUNA, declare:

I am the Petitioner in the above-entitled action. I have read the foregoing WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of August, 1998, at Escondido, California.

/s/ Jesse Laguna
JESSE LAGUNA